PMcE
New York, NY

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

AM PROPERTY HOLDING CORP.,
MAIDEN 80/90 NY LLC, AND MEDIA
TECHNOLOGY CENTERS, LLC,
a single employer, a joint employer with
PLANNED BUILDING SERVICES, INC.

and

Cases 02-CA-33146-1
02-CA-33308-1
02-CA-33558-1

LOCAL 32BJ, SERVICE EMPLOYEES
INTERNATIONAL UNION

and

UNITED WORKERS OF AMERICA
(Party In Interest)

AM PROPERTY HOLDING CORP.,
MAIDEN 80/90 NY LLC, AND MEDIA
TECHNOLOGY CENTERS, LLC,
a single employer, a joint employer with
SERVCO INDUSTRIES, INC.

and

Cases 02-CA-33864-1
02-CA-34018-1

LOCAL 32BJ, SERVICE EMPLOYEES
INTERNATIONAL UNION

ORDER DENYING MOTION FOR RECONSIDERATION

On December 15, 2017, the National Labor Relations Board issued a Decision and Order in this proceeding, finding that Respondent Planned Building Services (PBS), as an individual successor employer, violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to bargain with the Union. *AM Property Holding Corp., Maiden 80/90 NY LLC*, 365 NLRB No. 162 (2017). The Board accordingly ordered the Respondent to take certain

actions to remedy its unlawful conduct. PBS subsequently filed a motion for reconsideration of the Board's Decision and Order, and the General Counsel and Local 32BJ, Service Employees International Union (Union) filed briefs opposing that motion.

The Board has delegated its authority in this proceeding to a three-member panel.

PBS's motion is denied because the motion does not identify any material error or demonstrate extraordinary circumstances warranting reconsideration under Section 102.48(c)(1) of the Board's Rules and Regulations.[1]

Dated, Washington, D.C., March 6, 2018.

Mark Gaston Pearce, Member

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] PBS's only new argument is that it has been prejudiced by the Board's "inexcusable delay" in processing this case since it was remanded by the U.S. Court of Appeals for the Second Circuit in *Service Employees International Union, Local 32BJ v. NLRB*, 647 F.3d 435 (2d Cir. 2011). Without addressing the degree to which that delay was excusable, it is well established that "the Board is not required to place the consequences of its own delay, even if inordinate, upon wronged employees to the benefit of wrongdoing employers." *NLRB v. J.H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 265 (1969). See also *NLRB v. International Assn. of Bridge, Structural & Ornamental Ironworkers, Local 480, AFL-CIO*, 466 U.S. 720, 725 (1984) (same). Moreover, the two authorities PBS cites in support of this argument are entirely distinguishable. In *TNS, Inc. v. NLRB*, 296 F.3d 384 (6th Cir. 2002), cert denied 537 U.S. 1106 (2003), the court limited remedial back pay where the back pay had accumulated for many years while the case was litigated. Here, as noted in our underlying decision, PBS's service contract at issue was terminated after only 14 months, limiting its back pay liability to that period. 365 NLRB No. 162, slip op. at 8. In *Emhart Industries v. NLRB*, 907 F.2d 372 (2d Cir. 1990), an impasse case, by the time the court ruled on enforceability the parties had reached two successive agreements to adopt the seniority system (and all related reinstatements) that the employer first imposed unilaterally. The parties reached no agreement resolving the issues in this case.

Member Emanuel did not participate in the Board's underlying decision, and he expresses no view whether it was correctly decided. He agrees, however, that PBS's motion should be denied because it fails to establish any grounds warranting reconsideration under Sec. 102.48 of the Board's Rules.